Supreme Court, U. S.
FILED
DEC 27 1974
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1974

No. 73-2000

UNITED STATES OF AMERICA,
Petitioner

—v.—

JAMES ROBERT PELTIER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI FILED JULY 8, 1974
CERTIORARI GRANTED NOVEMBER 11, 1974

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-2000

UNITED STATES OF AMERICA,

Petitioner

—v.—

JAMES ROBERT PELTIER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

	Page
Docket entries	1
Indictment	4
Transcript of hearing on motion to suppress	5
Stipulation between government and respondent	27
Trial transcript	29
Judgment and commitment	37
Order granting certiorari	39

[The opinion and judgment of the court of appeals are appended to the petition for a writ of certiorari.]

DOCKET ENTRIES

DATE	PROCEEDINGS
3- 7-73	Ent. ord. and fld. Ind. JS 2. Bond fixed at $10,000 (PS) (CASH) + $1,000 cash.
	Fld. $10,000 P/S + $1,000 cash bond posted 2-28-73.
3- 9-73	Deft. arr. T/N & plea NG. Ent. ord. set for O.H. for 3-20-73 @ 10 am; ord. assigned to JUDGE SCHWARTZ. (HARRIS).
	Filed Magistrates Transcript.
3-20-73	O.H.—Fld. O. form. Ent. ord. set for 3-26-73 @ 9 am for mots. & jury trial settg. (McCUE)
3-26-73	Ent. ord. hrg. on mots. cont. to 4-9-73 @ 2 pm & for jury trial seetg. (S)
4- 5-73	Fld. not. of mot. for 4-16-73 @ 2 pm & mot. to suppress evid.; fld. P/A in suppt. of mot.; fld. affid. of Sandor W. Shapery in suppt. of mot.
	Fld. stip. w/ord. thereon to cont. hrg. mots. from 4-9-73 to 4-16-73 @ 2. (S)
4- 9-73	Fld. waiver of deft's presence t/w declaration of service by mail.
	Fld. dec. of ser. by mail w/not. of mot. to suppress evidence t/w aff. in support of mot. t/w P/A not for April 16, 1973 @ 2:00 p.m.
4-12-73	Fld. opp. to mot. to suppress t/w P/A.
	HRG. MOTS.—Swore wits., fld. exh. Ent. ord. hrg. mot. to suppress evid. denied; ord. trans. back to Judge Schwartz for jury trial settg. (GT)
	HRG. MOTS.—Ent. ord. mot. to suppress transferred to Judge Thompson; ord. case set for jury trial for 5-17-73 @ 9:30 am. (S)
5-17-73	Fld. waiver of trial by jury & of special findings of fact.

DATE	PROCEEDINGS
	Fld. stip. re facts.
	COURT TRIAL—Ent. ord. CT finds deft. G; trial submitted on stipulated facts & trans. of mot. to suppress; ord. ref. to P/O for I/R and cont. to 6-25-73 @ 9 am, for sent. (S) Fld. trans. of 4-16-73. (FRANDLE)
6-25-73	Ent. ord. comm. to cust. AG for 1 yr. & 1 day impr. under 18:4208(a)(2); ord. special parole 2 yrs.; ord. present bond to be exon. upon posting appeal bond in amt. of $10,000 P/S + $1,000 cash deposit. (S) JS-3.
	Fld. judgmt. iss. cys. (Ent. 6-25-73)
7- 3-73	Fld. NOTICE OFAPPEAL; designation of record on appeal.
7-10-73	Fld. not. of petn. for 7-30-73 @ 2 pm; fld. petn. for exon. of bail & P/A in suppt. thereof; fld. affid. of cnsl. t/w affid. of serv. by mail.
7-11-73	Fld. $10,000 bail bond on appeal + $1,000 cash bond posted 7-11-73 w/ord. thereon. (S) Issd. abstract of order to mars.
7-11-73	Fld. Order granting Appellant forma Pauperis standing.
7-30-73	HRG. MOTS.—Ent. ord. new bond on appeal shall be fld. $10,000 P/S & upon flg. said bond the old bond shall be exon. (S)
8- 1-73	Fld. ord. modif. appeal bond that deft be admitted to $10,000 bail, pending appeal with no cash deposit or other security required to be deposited with CT. (S)
	Fld. $10,000 bail bond on appeal posted 8-1-73. (S)
8- 3-73	Fld. orig. & 2 cys. of reptr's. trans. on appeal of 5-17-73 & 6-25-73. (RIPLEY)

DATE	PROCEEDINGS
8- 3-73	Mld. Clerk's Record t/w Reporter's Transcript to USCA.
8- 3-73	Fld. disb. ord. and drew ck. $1,000.00 payable James Peltier, refund cash bond on appeal. (S)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

November 1972 Grand Jury

No. 14780 Criminal

[Filed Mar. 7, 1973, Clerk, U.S. District Court, Southern District of California. By Jo Larson, Deputy]

UNITED STATES OF AMERICA, PLAINTIFF
v.

JAMES ROBERT PELTIER, DEFENDANT

INDICTMENT

Title 21, U.S.C., Sec. 841(a)(1)—Possession of a Controlled Substance with Intent to Distribute

The Grand Jury charges:

COUNT ONE

On or about February 28, 1973, in the Southern District of California, defendant JAMES ROBERT PELTIER did knowingly and intentionally possess, with intent to distribute, approximately 270 pounds of marihuana, a Schedule I Controlled Substance; in violation of Title 21, United States Code, Section 841(a)(1).

A TRUE BILL:

/s/ Leo H. Johnson
Foreman

/s/ Harry D. Steward—[initialed RWB]
HARRY D. STEWART
United States Attorney

RELS:ees (3-6-73)

TRANSCRIPT OF HEARING ON MOTION TO SUPPRESS EVIDENCE

[4] SAN DIEGO, CALIFORNIA:

APRIL 16, 1973: MORNING SESSION

THE CLERK: Case No. 14780; United States of America versus James Robert Peltier; for Hearing Motions.

MR. SHAPERY: Sandor Shapery, Your Honor, for the Defendant.

THE COURT: All right.

MR. COFFIN: Thomas Coffin for the Government, Your Honor.

There was no Search Warrant in this case; we are ready to proceed.

THE COURT: All right. You may proceed with your evidence.

MR. COFFIN: May I have one minute. The Government would call Charles Ainscoe, Your Honor.

THE COURT: All right.

MR. SHAPERY: Your Honor, may I request that the other Agent present be excluded from the courtroom during this testimony?

MR. COFFIN: That would be Mr. Pfiester, Your Honor; I have no objection.

[5] CHARLES AINSCOE,

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, took the stand and testified as follows:

THE CLERK: Take the stand, state your full name and spell your last name for the record.

THE WITNESS: Charles Ainscoe, A-i-n-s-c-o-e.

DIRECT EXAMINATION

BY MR. COFFIN:

Q Mr. Ainscoe, what is your occupation?
A I'm a Border Patrol Agent.
Q How long have you been employed as a Border Patrol Agent?
A About four years.
Q Prior to becoming employed as a Border Patrol Agent, what was your occupation?
A I was in the Marine Corps.
Q For how long, sir.
A Twenty-three years.
Q What rank did you have at the time you left the Marine Corps?
A First Sergeant.
Q Now, drawing your attention to February 28th of this year in the early morning hours of that date, where [6] were you stationed in connection with your duties as a Border Patrol Agent?
A My official station is Temecula, California; I was on Highway 395 near Temecula observing traffic.
Q Was that in a Border Patrol vehicle?
A That was in a Border Patrol Redlight Sedan.
Q And was anyone with you at that time?
A My partner, Bill Pfiester.
Q And at the point that you were observing traffic, sir, approximately how far is that from the Mexican-American Border?
A About seventy air miles, I believe.
Q Now, at about what time was it that you were observing traffic on the 28th of February?
A About 2:30, maybe a little before that, I believe.
Q And could you describe the traffic conditions at that hour for the Court?
A They were light, light traffic.
Q Did you have occasion, on that date, to see the Defendant, Mr. Peltier?
A Yes, I did.
Q What was he doing when you first saw him?

A We observed Mr. Peltier drive by, through our headlights, in his car, northbound on Highway 395.
[7] Q Now, there is a stationary checkpoint in the Temecula area, is there not?
A From time to time, yes.
Q Was that stationary checkpoint—was that operating on the 28th of February?
A No, it was not.
Q And was Mr. Peltier, at the time you saw him, or at the place that you saw him, would he have been north of that checkpoint?
A Yes, he would have been north of where the checkpoint normally is.
Q Now, what did you do after you saw Mr.—
THE COURT: Just a minute. How far north?
THE WITNESS: It would be about a mile and a half, Your Honor.
THE COURT: North of the checkpoint?
THE WITNESS: Yes, sir.
THE COURT: How far is that from the Border?
THE WITNESS: The checkpoint is about seventy miles from the Border, sir, air miles.
THE COURT: All right. Go ahead.

BY MR. COFFIN:

Q What did you do after you saw Mr. Peltier drive by?
A We pursued his vehicle and made a stop.
[8] Q What was your purpose in stopping him at that time?
A We were going to perform a routine immigration inspection to search for illegal aliens.
Q After you stopped Mr. Peltier, did you notice what type of license plates were on the vehicle he was driving?
A As he was stopping, we noticed that he had out-of-state license plates, Iowa, I believe it was.
Q And Mr. Peltier, was he alone in the car?
A Yes, he was.
Q What happened, then, after you stopped Mr. Peltier?
A I walked up to the door of Mr. Peltier's car, while my partner stayed back by the passenger door of the Patrol sedan. I told Mr. Peltier that it was a routine

immigration inspection and I asked him to look in his trunk.

Q Now, was that route that Mr. Peltier was traveling upon, was that known to you from previous occasions, as being a route used by alien smugglers?

A Yes, it was.

Q Would you say it was frequently used by alien smugglers?

A We have about nine hundred operations at [9] this point in the month at that station, and I would say the majority of them come from that highway.

Q What was your purpose in asking Mr. Peltier to open his trunk?

A We were going to search for illegal aliens.

Q All right. Now, what happened after you asked Mr. Peltier to open the trunk?

A He got out of the car; on the way back to the trunk, I asked him where he was coming from. He replied, I believe, San Diego. I asked him where he was going; he said, Las Vegas. He put the key in the trunk and I noticed there was a tag on it, and I asked him if it was his car; he said it was.

Q By a "tag," what do you mean when you said you notice a "tag" on it when he put the key in the trunk?

A It appeared to have some writing on it. I couldn't describe it exactly right now, but it was the type that is used on loaner vehicles or rental vehicles sometimes.

Q What year model was this car, do you recall?

A I don't recall.

Q Do you recall approximately how old the car was?

A It was in the sixties, early sixties, I think.

[10] Q Now, what did you do, then, after you noticed this—what happened?

A Then he opened the trunk, and I looked in the trunk and there were a number of suitcases and several plastic bags in the trunk.

Q By "plastic bags," would you describe those?

A The type of bag that is used as an insert for a garbage container.

MR. COFFIN: May I have a moment, Your Honor.

THE COURT: Yes.

MR. COFFIN: May the witness step down?

THE COURT: Yes. Go ahead, step down.

BY MR. COFFIN:

Q Agent Ainscoe, showing you—

MR. COFFIN: Can I mark these Government Exhibits 1 through 6?

THE COURT: They may be so marked.

(Government's Exhibits Nos. 1 through 6 were marked for identification.)

BY MR. COFFIN:

Q Showing you what has been marked as Government's Exhibit 1 for identification, a large red suitcase, can you identify that exhibit?

A I can't remember exactly whether these are the exact bags, but I think they were; there were several [11] suitcases and two or three bags.

Q Do you recall approximately how many suitcases there were?

A I didn't count them, but there were four or five.

Q Now, showing you—taking a plastic bag from Exhibit 1, can you identify this, sir?

A That is the type of bag that the marijuana was in, the bags at the time of the arrest were outside of the suitcases, and they were full of marijuana kilos, and they were pretty easily seen, they weren't symmetrical, the edges were sticking out every which way.

Q At any rate, the Defendant had three bags similar to what I am holding up now, in the trunk of his vehicle at the time the trunk was opened?

A I didn't count the bags. I remember there was three after we got back to the office, but there was definitely one in there.

Q After observing these plastic bags and suitcases in the trunk, did you notice anything else about the plastic bags at that time?

A Just as I said, they looked like kilo bricks of marijuana inside them.

Q What led you to conclude that?

A I have seen it before.
[12] Q Have you seen kilo bricks of marijuana before?
A Yes, I have.
Q On approximately how many occasions?
A On, I'm sorry to say, twenty, thirty times, different occasions.
Q Have you seen—and these are bricks that are shaped in a rectangular fashion; is that correct, kilo size?
A Right.
Q Have you seen kilo bricks of marijuana, prior to February 28th of this year, contained in plastic garbage bags before?
A Yes, I have.
Q Is it your testimony, on the 28th when the trunk was opened, that you saw some rectangular impressions inside the garbage bags at that time?
A That's right.
Q All right.
A I think—you can see the bags themselves; I think you can see a little bit through them, they are not completely opaque.
Q Did these rectangular impressions you saw on the garbage bags on February 28, were they similar or dissimilar to the marijuana bricks that you had seen on [13] previous occasions?
A They are similar.
Q After you made these observations, sir, what did you do next?
A As soon as I saw the bags with the kilo bricks, I turned around and I spoke to my partner and I said:
"Bill, I think we have got some weed here."
I asked Mr. Peltier to turn around and face away from me. My partner approached the Defendant and I went into the trunk with the intent to see what was in the bag. I smelled some marijuana and I tore open the bag.
Q Did you make this statement to your partner:
"I think we have some weed here,"
before or after you smelled marijuana?
A This was before I smelled marijuana.

Q And then what did you do?
A Well, after I made the statement, I asked Mr. Peltier to turn around, as I remember it, and, then, I went back into the trunk, put my head in the trunk, and this plastic bag was pretty far up in the back of the trunk, and I reached in there and I tore open the bag and I confirmed that they looked like bricks of marijuana.
Q Now, did you smell the marijuana prior to opening the bag?
A Yes.
[14] Q But after you made the statement:
"I think we have some weed?"
A Yes, that's right.
MR. COFFIN: May I approach the witness, Your Honor?
THE COURT: Yes.

BY MR. COFFIN:

Q Removing a kilo package from what has been marked as Government's Exhibit 1, can you identify that package for the Court, please?
A I have my initials on it and the date; this is the package I took from there.
Q You took from the trunk of Mr. Peltier's car?
A That's right.
Q Approximately how many packages of marijuana were there, do you recall?
A I don't remember, it is over a hundred; I can't remember exactly.
Q And were all the packages wrapped in this fashion?
A I believe there was two colors of paper, I'm not sure: I think some of them were brown, but they were all wrapped in that kind of butcher paper, I believe.
Q All right. And, specifically, drawing your [15] attention to these holes, which appear from this brick package that I have just shown you, sir, were those holes there, do you recall, at the time that you seized the marijuana?
A I don't remember.
Q At any rate, you, yourself, did not punch any holes in it?

A No, I did not.
Q What happened after you opened the bag and saw the marijuana?
A I placed Mr. Peltier under arrest; I patted him down and I read him his rights, and we went back to the office.
MR. COFFIN: I have no further questions.
THE COURT: Cross-examination?
MR. SHAPERY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SHAPERY:

Q The night of the 28th when you stopped this vehicle, about how many vehicles had you stopped that night?
A I think we had been pretty active; I can't really remember. I think we had stopped several.
Q Several that night?
[16] A It is hard to say, sir, you know, it has happened quite awhile ago. Some nights we run them down quite a few and other nights, we don't get quite as many.
Q About what percentage of the cars would you say you stopped versus the ones that go by.
MR. COFFIN: I will object, Your Honor; it is irrelevant.
THE COURT: Sustained.

BY MR. SHAPERY:

Q Was Mr. Peltier's car just picked at random?
A No; Mr. Peltier looked to me like a Mexican when he went by, and I chased him down for that reason; I thought he was a Mexican man.
Q You were parked with your lights shining across 395?
A That's right; I was parked on the center median.
Q This was at 2:30 in the morning, approximately?
A About; yes, about 2:30, something like that.
Q Do you recall approximately what rate of speed Mr. Peltier was traveling?
A No, I don't. He was going along just like the rest of them.

Q Is there any other reason why you stopped this particular car?
[17] A No.
Q You were not informed ahead of time, possibly?
A Absolutely not.
Q Do you recall the weather conditions that night?
A I think we had been having some rain; I don't know whether it was raining at the time, I think it had quit raining at the time.
Q At the time you stopped Mr. Peltier, did you observe any suitcases in the back seat?
A No, I didn't; he had some clothes in the back seat. I just—I took a quick look in the car when I went up and I saw it wasn't a load of aliens, so I just asked him to step back and open his trunk.
Q Now, when you asked him to open the trunk, the purpose was looking for illegal aliens?
A Absolutely.
Q At the time that you asked Mr. Peltier to open his trunk, where was your partner standing; do you recall?
A He was back by the passenger door of the Redlight sedan.
Q Was your vehicle parked behind Mr. Peltier's vehicle?
[18] A Yes, it was.
Q Did you have a flashlight?
A Yes, I did.
Q Were you using a flashlight?
A I suppose I was, I'm not sure; I probably did to look into the car.
Q When you opened the trunk, did you observe the position of the suitcases in relationship to the trash bags?
A I just remember that there were a lot of suitcases in there, and that the one trash bag that I looked into was sitting up near the back, the farthest away from the door, the edge of the door, and I think there was all three of the trash bags out there, but I couldn't swear; there was more than one of them, I'm pretty sure.

Q Now, you previously testified that you had prior experience of marijuana being smuggled in trash bags—

A That's right.

Q —and is that true—that led you to believe there was marijuana in these trash bags?

A Well, I think the main thing is, I saw the kilo bricks sticking out through them, you know, and it just looked like marijuana to me.

[19] Q Were there any holes in the trash bags, or was just the impression sticking out?

A I didn't see any holes; I can't really say. When I first looked at it, all I saw was the trash bag with the kilo bricks, the edges of the kilo bricks sticking out there. Like I said, you can almost see through that thing.

Q Are you aware of the fact there are six trash bags here?

A No, I wasn't.

Q Would you possibly recall that the trash bags were doubled; in other words, there was one inside of another one with the kilos inside of that?

A Well, I will tell you why I don't remember some of this stuff, is because after I got back to the office with Mr. Peltier in the sedan, I took him inside the office and I remained inside the office with Mr. Peltier for most of the remainder of the evening, until the Customs Agents arrived, and my partner was the one, with the aid of another Officer, who removed the marijuana from the vehicle, made the count, and later I went out. I made a count on the stuff with the Customs Agent and made my initials on several of the packages.

Q Would you be surprised to learn that the bags were doubled?

[20] MR. COFFIN: I object.

THE COURT: Sustained. I think you can ask him, Counsel, whether he remembers it or not and if he doesn't remember it, he doesn't remember it.

BY MR. SHAPERY:

Q Is is possible that the trash bags could have been doubled?

A Sure, possible.

MR. COFFIN: I will stipulate, Your Honor, that they were doubled.

THE COURT: All right.

MR. SHAPERY: Thank You.

BY MR. SHAPERY:

Q Now, at the time that you stuck your head into the vehicle's trunk and claimed that you smelled the marijuana, and at this point, you were fairly certain that there was marijuana in these trash bags and that is basically what you were looking for; is that right?

A That is exactly right.

Q And, then, you, at this point, put your head in the trunk and took a deep breath and smelled marijuana?

A I smelled the odor of marijuana as I was reaching in the trunk there.

Q Do you smoke?

A Yes, I do.

[21] Q Had you been smoking that night, do you recall?

A Probably, I can't say for sure.

Q The area where this car was pulled over, could you tell me what the terrain was like; was it a residential area or open fields?

A It was—I guess you would call it open fields; it wasn't—there was no houses or sidewalks near by.

Q You say it had been raining that night?

A I believe it had, yes.

MR. SHAPERY: I have no further questions, Your Honor.

THE COURT: All right. Anything further, Mr. Coffin?

MR. COFFIN: Just one, Your Honor, I forgot to bring this out on direct, if I may.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. COFFIN:

Q Prior to February 28th of this year, approximately how many occasions had you smelled the odor of marijuana?

A Just dozens; I can't really give you a [22] number, but dozens of times.

MR. COFFIN: I have nothing further.

THE COURT: All right. Would you step over here to the board, please, and show me where you were and what streets were coming into where you were and so forth; where you location first was and where you finally stopped the Defendant.

THE WITNESS: Okay.

THE COURT: Put North at the top.

THE WITNESS: This is Highway 395, northbound lane, southbound lane, center median; this is the Interstate Section called Rancho California Road; we were parked right here with out lights shining in this direction. Mr. Peltier went by northbound; we gave pursuit; we stopped him up, possibly, a half a mile or a little bit farther up north. There is one other street that comes in—

THE COURT: Winchester Road, isn't it?

THE WITNESS: From one side here, this is named Jefferson Street; it is somewhere between these two streets, I think.

THE COURT: South or north of Winchester?

THE WITNESS: Definitely south of Winchester, which is farther up.

THE COURT: All you could see—what could you see as he proceeded past you northbound?

[23] THE WITNESS: We saw an old car with what I thought was a Mexican driver, and this is a good bet for a load of aliens.

THE COURT: Did you see any of that material that was in the back; could you see any of the material in the back?

THE WITNESS: No, sir, we couldn't it went on by about fifty, sixty miles an hour.

THE COURT: All right. Anything further, gentlemen?

MR. COFFIN: Not on behalf of the Government.

MR. SHAPERY: May I ask some more questions, Your Honor?

THE COURT: Certainly; go ahead.

RECROSS EXAMINATION

BY MR. SHAPERY:

Q At the time you saw these bags, did you ask Mr. Peltier what they contained?

A No, I don't believe I did.

MR. SHAPERY: No further questions.

THE COURT: One other question. You said—I still don't understand—I take it there were none of these bags actually broken; you couldn't actually see the kilos?

[24] THE WITNESS: Let me show you, Your Honor, I think I could see it; I didn't remember myself until I saw it in Court today. You see there?

MR. SHAPERY: Excuse me, Your Honor, it was stipulated the bags were doubled, so if we could get it through two bags—

THE WITNESS: Yes; okay. Well, I guess I couldn't, but I saw all kinds of irregular shapes in kilo sizes like that, Your Honor.

THE COURT: Were the bags stuffed full?

THE WITNESS: They were pretty full, right.

THE COURT: And they were not stacked in any symmetrical order?

THE WITNESS: No, not symmetrical; the way they were set in there, the kilos were just like that, sticking out all over there.

THE COURT: All right. Anything further?

MR. COFFIN: No, your Honor.

THE COURT: All right. You may step down.

(Witness excused.)

THE COURT: Call you next witness.

MR. COFFIN: The Government would call Mr. Pfiester to the stand.

[25] WILLIAM PFIESTER,

called as a witness by and on behalf of the Plaintiff, having been first duly sworn, took the stand and testified as follows:

THE CLERK: Take the stand, state your full name and spell your last name for the record.
THE WITNESS: William Pfiester, P-f-i-e-s-t-e-r-.

DIRECT EXAMINATION

BY MR. COFFIN:

Q What is your occupation?
A Border Patrol Agent at Temecula.
Q How long have you been employed as a Border Patrol Agent?
A Approximately nineteen and a half years.
Q Drawing your attention to February 28th, 1973 in the early morning hours, did you have occasion to see the Defendant, Mr. Peltier, on that date?
A Yes, I did.
Q And were you with another Border Patrol Agent at that time?
A Agent Ainscoe.
Q Did you observe—after the stop of Mr. Peltier was made, did you observe Mr. Peltier when he opened the trunk of his vehicle?
[26] A Yes, I did.
Q What did you observe, if anything, Mr. Ainscoe do at that time?
A He asked Mr. Peltier what was in the suitcases and I couldn't hear his answer, I was too far away, and I saw him patting a couple of garbage bags with his hand, and a few seconds later, he said to me:
"I think we have some weed here."
Q What happened at that time?
A I moved up and watched Mr. Peltier to make sure he was no danger to my partner while my partner investigated further.
Q Did he then open the bags?
A I don't know if he opened it or punched a hole in it with his finger, I couldn't tell you.
Q But prior to opening the bags, he stated to you: "I think we have some weed here."
A That's correct.
MR. COFFIN: Thank you. I have no further questions.

THE COURT: All right. Cross-examination?
MR. SHAPERY: Yes, Your Honor.

[27] CROSS-EXAMINATION

BY MR. SHAPERY:

Q Did you just state that your partner was observed patting the bags with his hand?
A He felt of them, yes.
Q Was this prior to the statement that he said: "I think we have some weed here?"
A That's correct, sir.
MR. SHAPERY: I have no further questions.
THE COURT: Anything further, gentlemen?
MR. COFFIN: No, Your Honor.
THE COURT: You may step down.

(Witness excused.)

MR. COFFIN: Your Honor, if we may stipulate that these kilos contained in Government's Exhibit 1 are, in fact, kilo bricks of marijuana and that they are from the vehicle driven by Mr. Peltier on the date in question, and that they are from the vehicle driven by Mr. Peltier on the date in question, and that they are in the same condition as they were in on that date—
The Government will rest at this time.
MR. SHAPERY: So stipulated.
THE COURT: Anything for the Defense?
MR. SHAPERY: Yes, Your Honor.
What we have here is a situation where it is our [28] contention that probable cause was not justified, it was not established. Basically, what is being relied on by the Government is:

1) An out-of-state car was stopped;
2) Suitcases were found in the trunk; there was another suitcase in the back seat and some plastic bags in the trunk;
3) That there were irregular shapes sticking out of the plastic bags which, from my observations, could have been anything from a box of dog food to books or something like that;
4) The fourth point which is being relied upon is the fact that there was a tag on the key to the car;

5) The fifth point, as has been testified to, is one of the Agents stuck his head into the trunk, patted a bag, and claimed, at that point, that he had marijuana.

Now, taking each one of these points, I don't think it is uncommon to see an out-of-state car, particularly with suitcases in it. I think if there were any probability of any evidence leading to a carload of marijuana, it would probably be a car with a California license plate, rather than out-of-state. I think it is a common thing to see out-of-state cars with suitcases.

[29] Additionally, using trash bags; I personally have, on many occasions, especially on trips, taken and loaded up things in trash bags; such things as I didn't want in my suitcase, toiletries, thing like that that could spill out. I don't see anything uncommon with that.

Another point relied upon, is the fact that there was a tag on the key to the car. Now, I personnally have had my own car worked on a number of occasions and every time I take it in the shop, they put a tag on it and write down a license number. I think that doesn't lead to any greater inference that the car is borrowed, leased, stolen or anything else. I don't seee that the inferences are there.

If we reconstruct this, we start with:

1) A car with an out-of-state license plate;
2) Suitcases and plastic bags in a trunk;
3) The patting of the suitcases—the patting of the plastic bags.

At this point, it has been stated there was no longer a search for illegal aliens. There was no belief that they could be in the trash—in the plastic trash bags or in the suitcases; it is obvious they were not large enough.

At that point when he patted the bag, he was relying on:

[30] 1) Out-of-state-license;
2) A tag on a car key;
3) Previous observation that trash bags carry marijuana.

I think most trash bags are more often then not carrying things other than marijuana, especially one being

found in cars. I don't think that that establishes probable cause. In fact, I'm confident that it doesn't as a matter of law.

Now, the patting of the bag, at this point, was not a search for an illegal alien; at that point, feeling the bag would be a violation of Mr. Peltier's Constitutional Rights under the Fourth Amendment, to an illegal Search and Seizure.

Beyond this point, though, not only did he do this in violating his rights, he put his head into the trunk. He was no longer looking for illegal aliens; this was going beyond the scope, as all the cases have proved, going beyond the scope of a search for aliens, and on that basis, he must have probable cause and it was not present.

And on that basis, we feel that Mr. Peltier's Constitutional Rights have been violated, and that there is not probable cause to search a vehicle, as far as patting the bags or sticking his nose in there and smelling. On this basis, we feel there has been an illegal Search and [31] Seizure.

However, there is one last point I would like to make, that is, if we could possibly, in regard to saving the Government time and money, if we could stay any further proceedings pending the outcome of the *Almeida-Sanchez Case*, which is before the Supreme Court. It has already been argued and we are awaiting a decision any day to test the Constitutionality of the alien stop itself, and on that basis, I think maybe we could—if we could just have a stay of any further proceedings pending the outcome of that case, it might save the Court and the State some time and money.

THE COURT: All right. What do you have to say, Mr. Coffin?

MR. COFFIN: Well, first of all, Your Honor, stop, of course, comes under *Almeida-Sanchez*, and under the law, as it now stands, it is a valid stop; an Agent opening up the trunk of the vehicle, perfectly valid as an immigration check, and I think once he saw the garbage bags with kilo impressions coming out from them, that he could see the impressions of what he associated with

kilo bricks of marijuana, he had probable cause at that time to open the bags.

When you go further with that, and when you go to the actual smell of the marijuana, he definitely had [32] probable cause, but I think with just the visual observations of kilo impressions in garbage bags—you can sit here and take each point and explain it away, but we are not dealing with "beyond all doubt;" we are dealing with probable cause, and probable cause means just that.

What is probable under the circumstances? Is it probable that this is a man who says he is going to Las Vegas? Is it probable that he is transporting old cigar boxes in these three huge garbage bags, or is it more probable that he was transporting, what Agent Ainscoe had seen on previous occasions being transported in garbage bags, that is marijuana, and I think it is absurd to argue that a man of his experience would come to any different conclusion, but that the bags had, in fact, marijuana in them. And I think that, at that time, he had probable cause to open the bags.

He didn't open them at that time; apparently, he felt them and he also smelled marijuana. For the life of me, I can't conceive feeling a bag to be an Unconstitutional search.

I know of one case, decided by the Ninth Circuit, that said that:

"An Agent, rather than opening a footlocker, should have moved it to determine what, if anything, was inside of it before he opened it."

[33] That was a recent Ninth Circuit Case; I believe it was Judge Hoffstetler and Ely, where the Agent testified that he saw a rectangular footlocker and he thought they were connected and he opened them up to see if an alien was there. They said, rather than opening the footlocker—there turned out to be two separate footlockers —he should have taken the footlockers and see if they could be separated.

I think what is sauce for the goose, is sauce for the gander, and under that theory, certainly, Agent Ainscoe violated no one's rights in feeling the bag, especially, after he had reasonably concluded that there was, in fact, kilo bricks of marijuana in those bags.

Does Your Honor have any questions?

THE COURT: No.

MR. SHAPERY: Your Honor, if I may be heard on that point?

THE COURT: Go ahead.

MR. SHAPERY: I believe that the Government is trying to associate the moving of the footlocker, where there was a search for illegal aliens versus the feeling of the bag where there is belief that there is marijuana contained therein, they are two entirely different things.

Now, if Agent Ainscoe had felt the bag to see if there was an alien in there, I would say, fine, we do not [34] have an illegal Search and Seizure. However, it has been stated and it is a matter of record, now, that he was in search for marijuana and had the belief that there was marijuana. On that basis, he did not have authority to proceed any farther. If he had a reasonable belief that there was marijuana in the car, he could have had the car towed to a station or held there and gotten a Search Warrant or whatever, but it was a violation of my client's Fourth Amendment Constitutional Rights, in that, there was no probable cause to feel the bag.

Now, the question comes down to this, Your Honor, is it more likely than not that a car with a trash bag in it is going to contain marijuana. I don't think so. I don't think that most cars that have trash bags in them are going to contain marijuana, or would lead a person to believe that a car with a trash bag in it is going to have marijuana. I don't see that that even comes close to reasonable belief, more likely than not, or whatever terms you wish to use, that there was contraband in that car and that there was a crime being committed.

THE COURT: In listening to Mr. Ainscoe, I think that at the time that he stopped the automobile in the early morning hours on 395, that there is little or no doubt that, in his mind, he was looking for aliens.

He said the Defendant appeared to him to be [35] Mexican, and while, apparently he is of French extraction based upon his name, he does look to be dark-skinned and at night, that could easily be the case, that he would appear to be of Mexican descent.

After he stops the car, he asked for the key to the trunk and the Defendant opens the trunk with the key with the tag on it. I don't know that that is, in itself, of any great moment, but it is to suspicious Border Patrol Agents, a significant factor.

I would imagine that the out-of-state plates, at this point, with the tag on the key, became a factor. I would even say that was a significant factor, but when you put the two together, you might have a factor, and, then, he observes in the trunk, these brick impressions protruding from the garbage bags, which he associates and which he feels resemble kilo forms or kilo brick forms of marijuana, which he says he has observed on prior occasions in plastic bags, or plastic garbage-type bags.

Now, his testimony was that at the time he had formed in his mind an opinion that there was marijuana in those plastic bags, that as he went forward, I suppose you could say to verify that opinion, to inspect those plastic bags; he smelled the odor of marijuana after he had announced his statement that he thought there was marijuana in the car. We have "weed" here or whatever he [36] said, that he smelled the odor of marijuana before he touched the bags, not after. He couldn't have touched the bags until his head went into the car—until his head went—because he says they were way up in the back. That is his testimony.

Now, the next Officer said that—if I recall, that he touched the bag first, and then he said he thought that he had weed there, but one way or the other, if he smelled it, he smelled it right at the time of or, certainly, shortly before he touched the bags, because, according to his testimony, the bags were way up in the back, but that doesn't even concern me as much, because I think that the odd-shaped brick-type packages protruding through the plastic bags were the—and we have to look at the people that are—upon which probable cause is based. This is a Border Patrolman who has been in the business for four years now. He said he had seen these kilo bricks of marijuana on many, many occasions.

What is reasonable, probable cause? It is what this Court, I presume, terms to be what the Circuit Court

may not agree with. I don't know, but if we view it in the light of the Officer, his experience in his job, in the job that he is doing, and what he has seen in the past, I think we have to say that, even before he smelled the marijuana, when he saw these protruding objects which, [37] to him, resembled brick-shaped objects of marijuana, that they were not uniformly or symmetrically in the packages so they were protruding—there is no evidence to the contrary in that regard, that he had reasonable and probable cause to go further. He is not obligated to close his eyes if he is looking for aliens and he sees a machine gun laying on the back seat or—he is not obligated to close his eyes—Close the trunk and say: "I didn't see it."

Let's take something more closely akin or analogous to it. If he saw ballons in cylindrical shape or some condoms in cylindrical shape laying on the floor of the car, I think—I don't know about him, but I know I would certainly think that there might be some contraband in those ballons, heroin or cocaine or something of that nature.

I think that what he sees, we have to determine reasonable and probable cause by the Officer's good faith intentions, based upon what he sees and Mr. Ainscoe impresses me as one who states what he sees, was sure of what he saw. When he wasn't sure of something, he said it; like the number of suitcases in the back of the car, he said he didn't know. He said he didn't know what the car looked like, didn't remember. What he does remember, I think he articulated and I think there was [38] reasonable and probable cause to go further.

So, the motion is denied. The *Almeida-Sanchez* stay is also denied.

Mr. Shapery, we can't bog this court down with determinations of *Almeida-Sanchez* or determinations of *Mendez Rodriquez* just because they are before the Supreme Court. If that were the case, about two-thirds of the cases, or maybe even eighty percent of the cases—well, very likely, eighty percent of all of the cases, whether they were marijuana cases or whether they were alien cases, would be drawn to a complete halt, because

Judge Browning wrote a dissent in *Almeida-Sanchez*, so, without speaking to the merit of that dissent, the law still is that Border Patrol Agents have this right to stop under the Statute and so that motion, too, will be denied.

The matter is transferred back up to Judge Schwartz for—has there been a trial set? How does he do that?

MR. COFFIN: Perhaps—if the case is going back up to Judge Schwartz, I imagine he would set a trial date today.

THE COURT: Well, I would suggest, then, that you gentlemen—I just took the case for the purpose of hearing the motions.

MR. SHAPERY: Your Honor, we could get together and set a time to see Judge Schwartz again on the matter.

[39] THE COURT: All right. I would suggest that you proceed now back up to Judge Schwartz' Court, and tell him what you would like to see—or as soon as you get an opportunity, to be heard; that you would like to have a trial date, so that the Defendant can be present and he can be aware of the trial date.

MR. SHAPERY: Thank you, Your Honor.

MR. COFFIN: Your Honor, one further matter, if I may. May it be stipulated that the evidence—the physical evidence here at the Motion Hearing may be released back to the Customs possession?

THE COURT: We have never admitted it into evidence.

MR. COFFIN: All right.

THE COURT: It was just brought before the Court for identification.

(Adjournment.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

[Filed May 17, 1973, Clerk, U.S. District Court, Southern District of California. By Jo Larson, Deputy]

Criminal No. 14780

UNITED STATES OF AMERCIA, PLAINTIFF,

v.

JAMES ROBERT PELTIER, DEFENDANT

STIPULATION

HARRY D. STEWARD
United States Attorney
STEPHEN G. NELSON
Assistant U.S. Attorney
Chief, Criminal Division
THOMAS M. COFFIN
Assistant U.S. Attorney
United States Courthouse
325 West F Street
San Diego, California 92101

Attorneys for Plaintiff,
United States of American

It is hereby stipulated by and between the Plaintiff, United States of America, and the Defendant, James Robert Peltier, through himself and through his attorney of record, Sandor W. Shapery, that:

1. The Court may consider the evidence adduced at the hearing on the motion to suppress in rendering a verdict upon the trial of the case;

2. The substance seized from the 1962 Chevrolet driven and solely occupied by the defendant Peltier on February 28, 1973, is in fact marijuana, of the approximate quantity of 270 pounds, and has been the continuous

custody of the United States government since the time of its seizure on the above date. It is further stipulated that this marijuana need not be physically introduced into evidence at the trial of the case, but the Court may consider it as having been so introduced, subject to the defendants' objection on the grounds advanced in his motion to suppress;

3. The defendant James Robert Peltier did knowingly and intentionally possess, with intent to distribute, the marijuana concealed in the 1962 Chevrolet which he was driving on February 28, 1973;

4. Finally, it is expressly agreed that the above stipulations would not be entered into had the defendant's motion to suppress in the case been granted.

DATED: 5/17/73

HARRY D. STEWARD
United States Attorney

STEPHEN G. NELSON
Assistant U.S. Attorney
Chief, Criminal Division

/s/ Thomas M. Coffin
THOMAS M. COFFIN
Assistant U.S. Attorney

Attorneys for Plaintiff
United States of America

/s/ James Robert Peltier
JAMES ROBERT PELTIER
Defendant

/s/ Sandor W. Shapery
SANDOR W. SHAPERY
Attorney for Defendant

[1] TRIAL TRANSCRIPT

SAN DIEGO, CALIFORNIA,

THURSDAY, MAY 17, 1973, AT 10:15 AM

THE CLERK: Number 1 on calendar, case No. 14780, USA v. James Robert Peltier, for jury trial.

MR. SHAPERY: Ready, your Honor. There's been a jury waiver filed in that matter.

THE COURT: Is the jury waiver already on file?

THE CLERK: No, your Honor.

MR. COFFIN: Your Honor, it's been—

THE COURT: Oh, all right, will you please advise the defendant as to his rights.

THE CLERK: James Robert Peltier, you're informed you're entitled to a trial by a jury of 12 persons who must all find you either guilty or not guilty. You have a right to have witnesses summoned to testify in your behalf, and a right to confront and cross examine the Government witnesses who will testify against you.

You're further informed you have a right to take the witness stand to testify in your own behalf, or you may remain silent, as you cannot be required to testify.

If you desire to waive a jury trial, you may have a trial by the Court, who will hear the testimony of both sides and make the decision as to whether you are guilty or not guilty. Is it your desire to waive a jury trial?

DEFT. PELITER: Yes.

[2] MR. COFFIN: Your Honor, the jury waiver form has been signed by the defendant, his attorney, and myself, and I present it to your Honor for approval.

THE COURT: Mr. Peltier—is it Peltier or Pel-tyay?

DEFT. PELTIER: Peltier.

THE COURT: Mr. Peltier, have you discussed this matter of the waiver of jury trial with your attorney?

DEFT. PELTIER: Yes, sir.

THE COURT: And do you understand what you're doing as far as waiving a jury is concerned?

DEFT. PELTIER: Yes, sir.

THE COURT: Now, I want to point out to you that if you were tried by a jury, which is your right, it would be a jury of 12 persons, and all of them would have to make up their minds on the question of your guilt or innocence of the charges against you. Their verdict would have to be unanimous.

If you're tried just by the Court, it's only the Judge who has to make the determination as to whether you're guilty or innocent. Do you understand that?

DEFT. PELTIER: Yes, sir.

THE COURT: And do you still wish to waive your right to a jury trial and the other rights that go with it?

DEFT. PELTIER: Yes.

THE COURT: All right, the Court will now approve the [3] waiver of jury trial and it may be filed by the Clerk, and jury trial is waived in this case.

MR. COFFIN: Your Honor, the Government has prepared a stipulation as to the facts for this case to be tried on. I'd like to present a copy of that to your Honor now and perhaps your Honor would desire to advise the defendant of certain of his other rights he might be giving up by entering a stipulation.

THE COURT: All right, now, has a copy of this stipulation been provided to Mr. Shapery?

MR. COFFIN: Yes, your Honor, he has the original, which I've signed.

MR. SHAPERY: Yes, your Honor.

THE COURT: Now, has this been signed by yourself, Mr. Coffin, by Mr. Shapery, and by Mr. Peltier?

MR. COFFIN: The original's been signed by myself, and I don't think it has yet been signed by Mr. Shapery or Mr. Peltier. I don't—

THE COURT: All right. Before you say anything, let me just take a quick glance at it.

BY THE COURT:

Q. All right. Now, Mr. Peltier, in connection with this stipulation, have you had an opportunity to read it yet?

A. Yes, sir, I have.

Q. Now, you realize that ordinarily, at the trial of [4] a case such as this one, witness would be brought in by the Government. They would be sworn and they'd take the stand and they would testify from the stand under oath. You would have the right, through your attorney, to cross examine all of those witnesses and, as we say in the law, to confront the witnesses and be confronted by them.

In proceeding by way of a stipulation such as this, you are not having that opportunity, that is, the witnesses are not being called here live. Now, some witnesses were called to testify on the motion to suppress, and of course, those were under oath and were cross examined by your attorney.

Now, do you understand that you do have the right to confront witnesses, be confronted by them, and to cross examine them?

A. Yes, sir, I—

Q. And are you willing to waive and give up those rights?

A. Yes, I am.

THE COURT: All right. You've advised Mr. Peltier fully in this matter, have you, Mr. Shapery, regarding his rights of confrontation, cross examination, and so on?

MR. SHAPERY: Yes, I have, your Honor.

THE COURT: And it's on the basis of your discussions with him that this stipulation is being entered into?

[5] MR. SHAPERY: That is correct, your Honor. However, I would like the record to reflect the fact that the stipulation is conditional on the motion to suppress. In the event that it is appealed and there is a reversal, this stipulation—

THE COURT: Yes, I understand. In other words, you want to reserve your right and the right of the defendant with regard to the propriety of the ruling on the motion to suppress. Is that correct?

MR. SHAPERY: That's correct, your Honor.

THE COURT: All right. I think this stipulation in its terms does that.

MR. COFFIN: Your Honor, I have a transcript of the motion.

THE COURT: That's what I was concerned about. All right.

MR. COFFIN: These were heard before Judge Thompson on April 16th.

THE COURT: Yes. All right, Mr. Shapery, have you signed the stipulation?

MR. SHAPERY: Yes, I have, your Honor.

THE COURT: Has Mr. Peltier signed the stipulation?

MR. SHAPERY: Yes, he has.

MR. COFFIN: Your Honor, if I may, I would suggest one further point before the stipulation is accepted, because of the contents of paragraph 3 in the stipulation. It might be [6] advisable for the Court to caution Mr. Peltier about the maximum penalty in the case.

BY THE COURT:

Q. Mr. Peltier, has your attorney, Mr. Shapery, discussed with you the possible penalties under the law for this offense?

A. Yes, sir.

Q. And in that regard, has he advised you that the possible penalty under the law is a fine of up to $15,000, up to five years' imprisonment, and that both the fine and imprisonment could be imposed?

A. Yes, sir.

Q. Has he also advised you that in the event that any term of custody was imposed, that on your release from custody, you'd be required under the law to serve a special term of parole of two years?

A. Yes, sir, I understand that.

Q. All right. How old are you, Mr. Peltier?

A. Twenty-nine.

Q. Are you presently under probation or parole on any other offense or charge anywhere else?

A. No, sir.

Q. You're not subject to any other charge in any other court, whether it be State or Federal?

A. No, sir.

[7] MR. SHAPERY: Mr. Peltier's never been arrested before.

THE COURT: Is that in accordance with your understanding, Mr. Coffin?

MR. COFFIN: Yes, it is, your Honor.

BY THE COURT:

Q. All right. Now, having in mind the possible penalties for the offense with which you're charged, do you still wish to enter into this stipulation?

A. Yes, sir, I do.

Q. And you understand that the matter of sentencing, if it should come to that, would be entirely within the discretion of the Court?

A. Yes, I understand that.

MR. SHAPERY: Your Honor, I would also like the record to reflect that it was through mutual agreement with the U.S. Attorney that in the event an appeal is filed, the bond that is presently outstanding could be transferred to the appeal and would not require incarceration at that time.

MR. COFFIN: That's correct. I agreed, your Honor, not to ask that the defendant be remanded.

THE COURT: In other words, in the event that he were found guilty of the offense, he would continue on bail during and pending his appeal.

MR. COFFIN: Right.

THE COURT: Providing the appeal, if one is taken, is [8] prosecuted—

MR. SHAPERY: Timely.

THE COURT: —expeditiously and timely and that the defendant does not violate any of the terms of the bond on appeal.

MR. SHAPERY: That's correct, your Honor.

THE COURT: All right, anything further at this time? Has the stipulation been filed? Will you please hand it to the Clerk for filing.

THE CLERK: The stipulation has now been filed, your Honor.

THE COURT: May I see it? All right, Mr. Coffin, anything further to be presented—

MR. COFFIN: No, your Honor, the Government would rest.

THE COURT: —on behalf of the Government?

Were there any exhibits presented at the time of the suppression hearing?

MR. COFFIN: There were some suitcases and some plastic bags containing marijuana that were taken from the car at the Chevrolet—the Chevrolet.

THE COURT: Is it your feeling that, in view of the contents of the stipulation, there's no need to offer any of those exhibits in this trial?

MR. COFFIN: Yes, your Honor. The stipulation provides that they need not be physically introduced into evidence.

[9] THE COURT: Yes. Well, I was aware of what it provides with regard to the marijuana, but I just wondered as to any other items of physical evidence that were presented at the suppression hearing.

MR. COFFIN: No, it's also provided that the Court may consider all the evidence adduced at the hearing and that would include physical, too, your Honor.

THE COURT: All right, anything further, Mr. Coffin?

MR. COFFIN: No, your Honor. The Government would rest.

THE COURT: Does the defendant intend to offer any testimony or evidence at this time?

MR. SHAPERY: Your Honor, we intend to offer no evidence at this time. However, we would request that a probation report be prepared.

THE COURT: Well, before making a determination in this matter, I think I've got—since this suppression hearing was not heard by me, I think I have to read through the transcript of the testimony before I make a ruling on it.

MR. SHAPERY: Okay.

THE COURT: So we can recess this matter for a few minutes, at least, while I do read the transcript.

MR. COFFIN: All right.

THE COURT: Court will be in recess, then.

(Court recessed at 10:30 a.m., to reconvene at 10:45 a.m.)

[10] THE COURT: In this matter, case No. 14780, United States of America v. James Robert Peltier, I have read the stipulation in writing that has been filed by the parties. I've also read the transcript of the proceedings of April 16th, 1973, taken before Judge Gordon Thompson on the motion to suppress the evidence, which motion was denied, and on the basis of the evidence that is now before this Court, through the stipulation and the transcript of the proceedings on the motion to suppress, I'm convinced beyond a reasonable doubt that the defendant, James Robert Peltier, is guilty of the charge contained in the single-count indictment, Count 1 in case No. 14780, and it will be the finding of the Court that he is guilty.

Probation investigation and report will be ordered.

THE CLERK: June 25th, your Honor?

THE COURT: The matter will be set for sentencing and further proceedings on June 25th, 1973, at 9:00 a.m. And Mr. Peltier is directed at this time to report to the Probation Office on Front Street. That's 702 Front Street. Do you know where it is, Mr. Shapery?

MR. SHAPERY: Yes.

THE COURT: All right. And will you see to it that Mr. Peltier goes over there immediately.

The original deposition should be filed in the matter.

MR. SHAPERY: Thank you, your Honor.

[11] THE COURT: Your Honor, may I have the—may the transcript be released back to the Government?

THE COURT: The transcript released?

MR. COFFIN: Of the motion, on—

THE COURT: Well, the original, really, should be filed with the Court. Isn't there a copy somewhere?

MR. COFFIN: I'll come up and make a copy. When it goes up on appeal, it will be designated as part of the record.

THE COURT: Well, but if the transcript of the proceedings is considered by me in the matter, I think it should be filed in the case.

MR. COFFIN: Okay.

THE COURT: I mean, it's considered by me as evidence. I think it should be filed, rather than left in the possession of the U.S. Attorney. Not that you're going to do anything with it, but—

MR. SHAPERY: Thank you, your Honor.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

No. 14780—Criminal

[Entered Jun. 25, 1973, Clerk, U.S. District Court, Southern District of California. By [Illegible], Deputy]

UNITED STATES OF AMERICA

v.

JAMES ROBERT PELTIER

On this 25th day of June, 1973 came the attorney for the government and the defendant appeared in person and [1] by counsel, Sandor Shapery.

IT IS ADJUDGED that the defendant upon his plea of [2] not guilty and a finding of guilty has been convicted of the offense of possession of a controlled substance with intent to distribute, in violation of 21 USC 841(a)(1), as charged in the Indictment in one count, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized

---

[1] Insert "by [name of counsel], counsel" or without counsel; the court advised the defendant of his rights to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty and the court being satisfied there is a factual basis for the plea," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number " if required.

representative for imprisonment for a period of [4] one (1) year and one (1) day and pursuant to 18 USC 4208 (a) (2), the Court specifies that the defendant shall become eligible for parole at such time as may be determined by the Board of Parole.

IT IS ORDERED that in addition to such term of imprisonment, defendant is hereby required to serve a special parole term of two (2) years as prescribed by 21 USC 841(b) (1) (B).

IT IS ORDERED that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Filed: June 25, 1973

/s/ Edward A. Schwartz
EDWARD A. SCHWARTZ
United States District Judge

WILLIAM W. LUDDY
Clerk

By: /s/ D. M. Pellaton
D. M. PELLATON
Deputy Clerk

---

[4] Enter (1) sentence or sentences, specifying counts if any, (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

[5] Enter any order with respect to suspension and probation.

[6] For use of Court to recommend a particular institution.

SUPREME COURT OF THE UNITED STATES

No. 73-2000

UNITED STATES, PETITIONER

v.

JAMES ROBERT PELTIER

ORDER ALLOWING CERTIORARI. Filed November 11, 1974

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted. This case is set for oral argument in tandem with No. 73-2050, U.S. v. Ortiz; No. 73-6848, Bowen v. U.S.; and No. 74-114, U.S. v. Brignoni-Ponce.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1974 564236 74